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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of
Washington by:

American Lenders Corporation, and Elizabeth
K. Coan, Owner and Designated Broker

Respondent.

NO. C-04-250-05-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO PROHIBIT FROM INDUSTRY
AND COLLECT INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of September 10, 2005, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. Elizabeth K. Coan (Coan) is the owner and designated broker of American Lenders Corporation (ALC).

B. American Lenders Corporation was licensed by the Department as a Mortgage Broker on July 22, 1999, and holds License Number 510-MB-1740-00. ALC is known to have conducted business at the following location:

American Lenders Corporation
11415 NE 128th St. Ste 100
Kirkland, WA 98034

1.2 Investigation: The Department received information from former employees of ALC and the City of Kirkland Police Department (Kirkland Police) that Coan had used the personal identification and financial information from a mortgage loan customer to commit multiple counts of identity theft, forgery and theft. The Department initiated an investigation to review the allegations against Coan and remained in contact with the Kirkland Police during the course of their investigation. The King County Prosecutor's Office filed charged against Coan related to the identity theft. Kirkland Police learned that after being charged for the identity theft, Coan had solicited her son, Nicholas Bus, to intimidate witnesses. The King County Prosecutor's Office charged Coan with multiple felonies related to witness intimidation.

1.3 Criminal Conviction of Felonies: On August 5, 2005, in the Superior Court of King County before the Honorable Judge Canova, in Cause No. 04-C-01505-3 SEA and 05-1-000497-1 SEA, Coan was sentenced to the following:

A. Identity Theft 1 –(two counts) RCW 9.35.020(2)

B. Solicitation to Commit Assault in the Second Degree – RCW 9A.28.030 &
9A.36.021(1)(A)

C. Forgery – (seven counts)- RCW 9A.60.020(1)(A)

1.4 Sentence: As a result of Coan's conviction of the ten felonies described in Paragraph 1.3 above, a Judgment and Sentence was ordered against Coan as follows:

A. Restitution, Fees and Fines: Coan was ordered to pay restitution to the injured victims, in an amount to be determined at a later hearing. Coan was also ordered to pay \$1000 in other fees and fines.

B. No Contact: Coan was ordered not to have contact with the victims for five years.

C. Confinement: Coan was ordered to serve 84 months of confinement in the custody of the Washington State Department of Corrections. After serving her period of confinement, Coan will be placed in community custody for 18 to 36 months.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Prohibited Acts: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(1), (2) and (3) for directly or indirectly employing a scheme, device or artifice to defraud or mislead borrowers, engaging in an unfair or deceptive practice toward any person, and obtaining property by fraud or misrepresentation.

2.2 Authority to Prohibit from the Industry: Pursuant to RCW 19.146.220(2)(e)(i), the Director may prohibit from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9), or RCW 19.146.265.

2.3 Authority to Charge Investigation Fee: Pursuant to RCW 19.146.228(2), WAC 208-660-060(4) and WAC 208-660-061, upon completion of any investigation of the books and records of a licensee or other person subject to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of forty-seven dollars and seventy-eight cents (\$47.78) per hour that each staff person devoted to the investigation.

III. NOTICE OF INTENTION TO ENTER ORDER

Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry

1 of an Order under RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the
2 Director's intention to ORDER that:

- 3
- 4 3.1 Respondent Elizabeth K. Coan be prohibited from participation in the conduct of the affairs of
5 any licensed mortgage broker, in any manner, for a period of ten (10) years; and
- 6 3.2 Respondent Elizabeth K. Coan pay an investigation fee in the amount of \$478.80 calculated at
7 \$47.78 per hour for 10 staff hours devoted to the investigation.

8 IV. AUTHORITY AND PROCEDURE

9 This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry and
10 Collect Investigation Fee is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221,
11 RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The
12 Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in
13 the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
14 accompanying this Statement of Charges and Notice of Intention to Enter an Order to Prohibit from
15 Industry and Collect Investigation Fee.

16


17 Dated this 31st day of October 2005.



22 Presented by:

23

24 
25 Ned Jursek
26 Financial Legal Examiner


CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions

1 **RCW 19.146.010 Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

2 ...
(12) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a)
3 makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b)
holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to
obtain a residential mortgage loan.

4 ...
(14) A person is "convicted" of a crime, irrespective of the pronouncement or suspension of sentence, if the person:
•Is convicted of the crime in any jurisdiction;
5 •Is convicted of a crime which, if committed within this state would constitute such a crime under the laws of this state;
•Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to
6 such a charge before a court or federal magistrate; or
•Has been found guilty of such a crime by the decision or judgment of a court or federal magistrate or by the verdict of
7 a jury.

(15) "Department" means the department of financial institutions.

8 ...
(17) "Director" means the director of financial institutions.

9 ...
(22) "Independent contractor" or person who independently contracts" means any person that:
• Expressly or impliedly contracts to perform mortgage broker activities for a licensee;
10 • With respect to its manner or means of performing the activities, is not subject to the licensee's right of control; and
• Is not treated as an employee by the licensee for the purposes of compliance with federal income tax laws.

11 ...
(24) "License" means a license issued by the director to engage in the mortgage broker business.

12 (25) "Licensee" or "licensed mortgage broker" means:
•A mortgage broker licensed by the director; and
13 •Any person required to be licensed pursuant to RCW 19.146.200 and 19.146.020.

14 (26) "Loan originator" means a natural person:
•Who is a mortgage broker employee who performs any mortgage broker activities; or
•Who is retained as an independent contractor by a mortgage broker, or represents a mortgage broker, in the
15 performance of any mortgage broker activities.

16 ...
[1997 c 106 § 1; 1994 c 33 § 3; 1993 c 468 § 2; 1987 c 391 § 3.]

17 **RCW 19.146.0201 Loan originator, mortgage broker -- Prohibitions -- Requirements.**

18 It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or
mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f) in connection with a
residential mortgage loan to:

19 (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud
20 any person;

21 (2) Engage in any unfair or deceptive practice toward any person;

22 (3) Obtain property by fraud or misrepresentation;

23 (4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or
commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the
24 borrower;

- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1) (f) or (g) or a lender with whom the mortgage broker maintains a written correspondent or loan brokerage agreement under RCW 19.146.040;
- (6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;
- (7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;
- (8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department;
- (9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;
- (10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest or otherwise fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12, as now or hereafter amended, in any advertising of residential mortgage loans or any other mortgage brokerage activity;
- (11) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;
- (12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.040;
- (13)(a) Except when complying with (b) and (c) of this subsection, to act as a mortgage broker in any transaction (i) in which the mortgage broker acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;
- (b) Prior to providing mortgage broker services to the borrower, the mortgage broker, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:
- THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LICENSED MORTGAGE BROKER, AND WOULD LIKE TO PROVIDE MORTGAGE BROKERAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY. YOU ARE NOT REQUIRED TO USE ME AS A MORTGAGE BROKER IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and
- (c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage brokerage business activities and shall maintain such person's mortgage brokerage business records separate and apart from the real estate brokerage activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the brokerage business firms results. This subsection (13)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage brokerage activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

(14) Fail to comply with any provision of RCW 199.146.030 through 199.146.080 or any rule adopted under those sections.

[1997 c 106 § 3; 1994 c 33 § 6; 1993 c 468 § 4.]

RCW 19.146.220 Director -- Powers and duties -- Violations as separate violations -- Rules.

(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

(a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);

(b) Suspend or revoke licenses for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) Failure to comply with any directive or order of the director;

(d) Issue orders directing a licensee, its employee or loan originator, or other person subject to this chapter to:

(i) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter; or

(ii) Pay restitution to an injured borrower; or

(e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(iii) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(iv) Failure to comply with any directive or order of the director.

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(4) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(5) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

[1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

RCW 19.146.221 Action by director -- Hearing -- Sanction.

The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated

1 for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If
2 the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any
grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

3 [1994 c 33 § 13.]

4 **RCW 19.146.223 Director -- Administration and interpretation.**

The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005.

5 [1994 c 33 § 2.]

6 **RCW 19.146.228 Fees -- Rules -- Exception.**

7 The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of
administering this chapter. These fees may include:

- 8 (1) An annual assessment paid by each licensee on or before a date specified by rule;
9 (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person
subject to this chapter; and
10 (3) An application fee to cover the costs of processing applications made to the director under this chapter.

11 Mortgage brokers shall not be charged investigation fees for the processing of complaints when the investigation
determines that no violation of this chapter occurred or when the mortgage broker provides a remedy satisfactory to the
complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the
authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account
is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this
chapter shall be deposited in the consumer services account.

12 [2001 c 177 § 5; 1997 c 106 § 13; 1994 c 33 § 9.]

13 **RCW 19.146.230 Administrative procedure act application.**

14 The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and
imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall
be governed by the provisions of the administrative procedure act, chapter 34.05 RCW.

15 [1994 c 33 § 16; 1993 c 468 § 10.]

16 **RCW 19.146.235 Director -- Investigation powers -- Duties of person subject to examination or investigation.**

17 For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by
a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every
18 licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act
under or without the authority of this chapter. For that purpose the director and designated representatives shall have access
during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults
19 of all such persons.

20 The director or designated person may direct or order the attendance of and examine under oath all persons whose
testimony may be required about the loans or the business or subject matter of any such examination or investigation, and
21 may direct or order such person to produce books, accounts, records, files, and any other documents the director or
designated person deems relevant to the inquiry. If a person who receives such a directive or order does not attend and
testify, or does not produce the requested books, records, files, or other documents within the time period established in the
22 directive or order, then the director or designated person may issue a subpoena requiring attendance or compelling
production of books, records, files, or other documents. No person subject to examination or investigation under this
chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other
23 information.

1 Once during the first two years of licensing, the director may visit, either personally or by designee, the licensee's place or
2 places of business to conduct a compliance examination. The director may examine, either personally or by designee, a
3 sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and
4 undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter.
For those licensees issued licenses prior to March 21, 1994, the cost of such an examination shall be considered to have
been prepaid in their license fee. After this one visit within the two-year period subsequent to issuance of a license, the
director or a designee may visit the licensee's place or places of business only to ensure that corrective action has been
taken or to investigate a complaint.

5 [1997 c 106 § 14; 1994 c 33 § 17; 1993 c 468 § 11.]

6 **WAC 208-660-060 Department's fees and assessments.**

7 (1) Upon completion of processing and reviewing an application for a license or branch office certificate, the department
8 will prepare a billing, regardless of whether a license or certificate has been issued, calculated at the rate of \$35.98 per hour
that each staff person devoted to processing and reviewing the application. The application deposit will be applied against
this bill. Any amount left owing to the department will be billed to and paid promptly by the applicant, while any balance
remaining from the deposit will be refunded promptly to the applicant.

9 (2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee
10 a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per hour that
each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt.
11 Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first
compliance examination of the licensee conducted by the department during the first two years after the date of issuance of
the license.

12 (3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch
office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the
anniversary date of the issuance of the broker's license occurs.

13 (4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the
14 department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be
calculated at the rate of \$46.26 per hour that each staff person devoted to the investigation. The investigation billing will be
paid by the mortgage broker promptly upon receipt.

15 [Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-
16 060, filed 5/29/01, effective 7/1/01; 96-04-028, recodified as § 208-660-060, filed 2/1/96, effective 4/1/96. Statutory
Authority: RCW 19.146.225. 95-13-091, § 50-60-060, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-060, filed
17 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-060, filed 1/7/94, effective 2/7/94.]

18 **WAC 208-660-061 Fee increase.**

19 The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to
initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees
and assessments each fiscal year during the 2001-03 biennium.

20 (1) On July 1, 2002, the fee and assessment rates under WAC 208-660-060, as increased in the prior fiscal year, will
increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal
21 growth factor" has the same meaning as the term is defined in RCW 43.135.025.

22 (2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed
the applicable fiscal growth factor.

23 (3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately
following July 1.

1 [Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-
061, filed 5/29/01, effective 7/1/01.]

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